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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 MICHAEL CURTIS,  
11 Plaintiff,  
12 vs.  
13 STATE OF NEVADA, *et al.*,  
14 Defendants.

Case No. 2:21-cv-02250-JAD-EJY

**STIPULATION AND ~~PROPOSED~~  
ORDER TO REOPEN DISCOVERY  
(THIRD REQUEST)**

15 Plaintiff, Michael Curtis (Curtis), acting *pro se*, and Defendants, Julio Calderin,  
16 Charles Daniels, Monique Hubbard-Pickett, and Brian Williams, by and through counsel,  
17 Aaron D. Ford, Nevada Attorney General, and Samuel L. Pezone Jr., Deputy Attorney  
18 General, hereby stipulate and agree to extend the time for discovery. There is good cause  
19 and excusable neglect for this Court to reopen discovery. LR 26-3.

20 **I. CERTIFICATION REGARDING THE MEET AND CONFER**

21 The parties hereby declare and certify that they met and conferred via telephone on  
22 December 5, 2023, regarding the discovery deadlines. At this meet and confer, the parties  
23 agreed to stipulate to reopen the discovery deadlines as herein provided.

24 **II. STATEMENT OF DISCOVERY PERFORMED**

25 The discovery period for this matter began on March 16, 2023, pursuant to this  
26 Court's Scheduling Order, ECF No. 25. On March 29, 2023, Defendants served their  
27 mandatory disclosures pursuant to this order. ECF No. 25 at 2:1-10.

28

1       On October 24, 2023, Defendants served their first set of Requests for Admission  
2 (RFAs) on Curtis, which included questions that referred Curtis to the contents of ECF No.  
3 41-1. Defendants received Curtis' responses on November 28, 2023, which alerted counsel  
4 to the fact that half of every other page in ECF No. 41-1 had been cut off. Although Curtis  
5 wished to serve written requests for discovery on Defendants, until very recently, Curtis  
6 been unable to purchase sufficient supplies to prepare and serve his own written discovery  
7 requests.

8 **III. DESCRIPTION OF DISCOVERY THAT REMAINS TO BE COMPLETED**

9       Defendants would like the opportunity to obtain supplemental responses to their  
10 RFAs based upon a forthcoming corrected image to ECF No. 41-1. Plaintiff has also  
11 expressed a desire to propound written discovery now that he has supplies with which to  
12 draft these requests.

13 **IV. STATEMENT OF GOOD CAUSE**

14       To demonstrate good cause, the parties must show "that, even in the exercise of due  
15 diligence, [the parties were] unable to meet the timetable set forth in the order." *Cruz v.*  
16 *City of Anaheim*, CV1003997MMMJEMX, 2011 WL 13214312, at \*2 (C.D. Cal. Dec. 19,  
17 2011) (citing *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.  
18 2002); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). Prejudice  
19 to the opposing party is a factor in determining good cause, though lack of prejudice is "not  
20 a prerequisite." *Id.*

21       There is good cause to extend the discovery deadline. Defendants were unaware of  
22 the issues with ECF No. 41-1 until undersigned counsel received and reviewed Curtis'  
23 responses on November 28, 2023. By that time, the deadline for discovery, November 27,  
24 2023, ECF No. 40, had already passed. In addition, undersigned counsel only became aware  
25 of Curtis' inability to serve discovery on December 5, 2023. Curtis is proceeding *pro se* and  
26 is relatively unfamiliar with the process for seeking extensions of discovery.

27       The parties would like additional time for Curtis to draft a supplemental response  
28 to Defendants' RFAs, and for Curtis to draft and serve written discovery requests. Both

1 parties will benefit from an extension, and neither party will be prejudiced by additional  
2 discovery. There is good cause to reopen discovery.

3 **V. STATEMENT OF EXCUSABLE NEGLECT**

4 In determining whether any parties' neglect is excusable, courts of this circuit weigh  
5 four factors: "(1) the danger of prejudice to the non-moving party, (2) the length of delay  
6 and its potential impact on judicial proceedings, (3) the reason for the delay, including  
7 whether it was within the reasonable control of the movant, and (4) whether the moving  
8 party's conduct was in good faith." *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004);  
9 *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380,  
10 395 (1993).

11 As to the first factor, the parties maintain that they will not be prejudiced by an  
12 extension. The parties maintain that they will all benefit from an extension of the discovery  
13 deadline.

14 As to the second factor, the parties request an extension of discovery of no more than  
15 90 additional days. This case is still relatively young, and the parties do not seek to prolong  
16 these proceedings any more than is necessary. As stated, the parties have been constrained  
17 from completing discovery by their individual circumstances.

18 As to the third factor, the parties maintain that delay is no fault of any party.  
19 Defendants only learned of the error in ECF No. 41-1 following receipt of Curtis' responses  
20 to Defendants' RFAs. Counsel filed ECF No. 41-1 with pages rotated counterclockwise;  
21 counsel was unaware that PACER would revert those pages to their previous orientation  
22 and proceed to cut off half of each page.

23 Finally, the parties maintain that their conduct was in good faith. The parties  
24 previously sought an extension in good faith, ECF No. 39; and undersigned counsel, in good  
25 faith, filed ECF No. 41-1, and was not aware PACER would cut off pages of the Exhibit.  
26 The parties are requesting this extension in good faith to obtain additional discovery, and  
27 not for the purposes of delay. The parties' neglect, if any, is excusable.

1 VI. ~~PROPOSED~~ SCHEDULE FOR COMPLETING ALL REMAINING  
2 DISCOVERY

3 The parties propose the following schedule for completion of all remaining discovery  
4 and the filing of any dispositive motions:

5 • The deadline for completion of discovery will be extended to **March 11, 2024**.  
6 • The deadline to file discovery motions will be extended until **April 10, 2024**.  
7 • The deadline to file any dispositive motions will be extended until **May 10,**  
8 **2024**.  
9 • The deadline to file a Joint Pre-Trial order will be extended until **June 10,**  
10 **2024**, or, if dispositive motions are filed, until thirty (30) days after the entry  
11 of any order on the dispositive motions.

12 VII. CONCLUSION

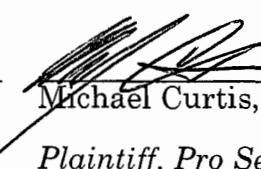
13 Based on the foregoing, good cause and excusable neglect exist and the parties  
14 respectfully request that this Court reopen the deadline for discovery for 91 days up to and  
15 including March 11, 2024.

16 DATED this 14th day of December, 2023. DATED this 14th day of December, 2023.

17 AARON D. FORD  
18 Attorney General

19 /s/ Samuel L. Pezone, Jr.  
SAMUEL L. PEZONE, JR. (Bar No. 15978)  
20 Deputy Attorney General

21 Attorneys for Defendants

 1195453  
Michael Curtis, #1195453

Plaintiff, Pro Se

22 ORDER

23 IT IS SO ORDERED:

24 DATED: December 15, 2023

25   
26 Layna J. Zouchah  
27 UNITED STATES MAGISTRATE JUDGE  
28